

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

MAXUS REALTY TRUST, INC.,)	
)	
Plaintiff,)	
)	Case No. 06-0750-CV-W-ODS
v.)	
)	
RSUI INDEMNITY COMPANY,)	
)	
Defendant.)	

**SUGGESTIONS IN SUPPORT OF MAXUS' MOTION *IN LIMINE* TO
PRECLUDE RSUI INDEMNITY COMPANY FROM PRESENTING EVIDENCE
THAT MAXUS CANNOT RECOVER FOR PROPERTY DAMAGES BY
WIND THEN WATER**

Plaintiff Maxus Realty Trust, Inc. ("Maxus") submits its Suggestions in Support of its Motion *in Limine* to preclude Defendant RSUI Indemnity Company ("RSUI") from introducing any evidence that Maxus cannot recover pursuant to RSUI policy for any property damaged by both wind then water.

ARGUMENT

It is anticipated that RSUI will attempt to argue that if the Waverly Apartments were damaged by wind and then by storm surge, Maxus cannot recover for that damage under the RSUI policy. This Court, however, rejected that argument in its December 17, 2007 Order and Opinion denying RSUI's Motion for Partial Summary Judgment. RSUI argued that any damage caused by flood, in any sequence, was excluded under the RSUI policy. Because the flood rose approximately four feet into the second floor of the Waverly Apartments, RSUI argued that Maxus could not recover for any damage below that water line. This Court held, however, that the presence of the water line did not establish that all damage below the water line was excluded. *Order*, p. 4. In light of the

Court's finding, Maxus respectfully requests that RSUI be prohibited from making that same argument at trial.

CONCLUSION

For the foregoing reasons, Plaintiff Maxus Realty Trust, Inc. requests that the Court grant the present motion *in limine*.

Respectfully submitted,

s/Amy Greenstein

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing on the 1st day of April, 2008 to the following:

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